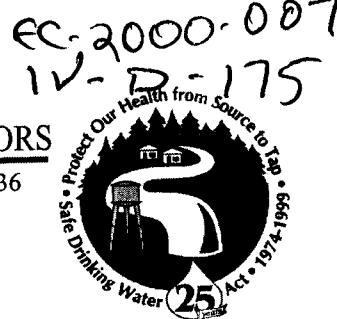
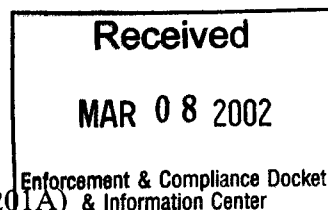


ASSOCIATION OF STATE DRINKING WATER ADMINISTRATORS

1025 CONNECTICUT AVENUE, N.W. • SUITE 903 • WASHINGTON, D.C. 20036
(202) 293-7655 • FAX (202) 293-7656 • asdwa@erols.com • www.asdwa.org



February 27, 2002



United States Environmental Protection Agency
Enforcement and Compliance Docket and Information Center (MC 2201A)
ATTN: Docket Number EC-2000-007
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Enforcement and Compliance Docket and Information Center:

The Association of State Drinking Water Administrators (ASDWA) is providing the following comments on the proposed rule on electronic reporting and electronic records (also referred to as the Cross Media Electronic Reporting and Records Rule or CROMERRR) as published in the August 31, 2001 *Federal Register* (66 FR 46162). ASDWA is the professional Association that represents the collective interests of the nation's state drinking water programs responsible for implementation of the Federal Safe Drinking Water Act (SDWA). We appreciate the opportunity to provide comments on this proposed rule as well as the additional time EPA has provided for the preparation of comments.

ASDWA recognizes the potential benefits of the electronic transfer of data and the different activities underway to support this effort, such as this proposed rule, the development of data standards by the Environmental Data Standards Council, and the continuing advancement of the National Environmental Information Exchange Network. Although ASDWA supports these activities, state drinking water programs do have some general concerns and reservations about the electronic transfer of data as well as specific comments on this proposed rule.

Rules for electronic reporting and electronic recordkeeping must be both flexible and performance-based in order to be effective. Overly prescriptive procedures will impede or preclude the ability of many state drinking water programs to implement electronic reporting and electronic recordkeeping. State drinking water programs would prefer to see a rule that includes general standards that could be met in a variety of ways as this will afford states much needed flexibility to meet the goals of the rule. Also, EPA must be aware that overly burdensome requirements will also preclude some regulated entities from electronic reporting and electronic recordkeeping, which is in direct conflict with the purpose of this proposed rule.

General Comments on the Electronic Transfer of Data

One of the main concerns of state drinking water programs is the mixed message as to whether requirements that relate to the electronic data transfer are voluntary or mandatory and the potential impact on state data systems if and when electronic transfer of data becomes mandatory. CROMERRR and data standards are presented as **voluntary** and only apply *if you chose to transfer data electronically*. However, once you chose to transfer data electronically, you trigger a slew of **mandatory** requirements that must be met. State drinking water programs are concerned that these mandatory requirements may deter some states from implementing electronic transfer of data due to the need to upgrade their data systems. States are also concerned that some existing transfer practices may not be allowed under the new paradigm and that they would be forced to revert to paper submissions.

State drinking water programs are also concerned about difficulties that might arise based on the differences between system-to-EPA reporting and system-to-state reporting. Forty-nine states currently have primacy that allows the state drinking water program, not EPA, to implement the provisions of the SDWA. As such, water systems submit drinking water monitoring results to the state and the state makes compliance determinations based on the data as well as decisions on the need for further action by the water system. States in turn only report violations to EPA. States do not currently report all parametric data. Thus, electronic transfer of data takes on a different meaning for state drinking water programs and water systems as electronic transfer of data as portrayed in CROMERRR and data standards really affect water system-to-state data transfer and not state-to-EPA data transfer.

However, EPA's Office of Ground Water and Drinking Water (OGWDW) is currently modernizing their computer systems and are undoubtedly designing the system with electronic transfer of data in mind. Additionally, state drinking water programs and OGWDW are currently debating EPA's need for all water system parametric data for rule oversight and for development of new rules. States are concerned that OGWDW will incorporate electronic transfer of data into their modernization process and state drinking water programs will need to adapt their data systems to meet pre-existing standards, which would be resource intensive.

Another state drinking water program concern is the possibility of laboratories reporting drinking water quality data directly to EPA or other entities prior to state review of the data. This would include direct reporting to EPA through the Central Data Exchange (CDX). This concern is based primarily on the role the state drinking water program plays in ensuring the quality of data and using the data to make compliance determinations. States review sample results to ensure the quality of the data. This includes confirming that the samples were collected appropriately (e.g., time, location, etc.) and analyzed by a certified laboratory using certified methods as well as ensuring that the supporting information (e.g., system name, identification numbers, etc.) is accurate.

State drinking water programs also need the data to perform compliance determinations. Many state drinking water program computer systems are not currently capable of retrieving this data from a central location (e.g., the CDX) and such retrieval could be quite burdensome to the state. Also, states are extremely concerned that the public would have access to unqualified data that may need corrections and, if not qualified, could be open to misuse and/or misinterpretation. States need to have the opportunity to review the data, confirm the data and supporting information, and use the data to perform compliance determinations before the data can be made available to EPA and the general public.

EPA must carefully consider the implications if electronic transfer of data is to become mandatory. The associated cost to improve the computer systems in some state drinking water programs may be overwhelming and upgrading state drinking water computer systems to allow for transfer of all data could be cost-prohibitive in some cases. The issues of data quality and state use of data for making compliance determinations will also need to be addressed.

Specific Comments on Proposed Rule

Voluntary Requirements Versus Mandatory Requirements

As indicated previously, state drinking water programs are concerned about the mixed message as to whether requirements that relate to the electronic data transfer are voluntary or mandatory and the potential impact on state data systems if and when electronic transfer of data becomes mandatory. EPA must carefully consider the implications of promulgating a rule that includes mandatory requirements regulating the electronic transfer of data. This includes determining the cost for regulated entities to comply with the requirements as well as cost to states in those programs where EPA has delegated primary enforcement authority, such as the drinking water program. EPA must ensure that mandatory rules do not preclude the electronic transfer of data and force regulated entities to revert to paper submissions.

Once Size Does Not Fit All

Although ASDWA appreciates EPA's efforts to ensure that the requirements for electronic reporting and electronic recordkeeping are consistent across all EPA programs, the needs for each program may differ and a "one size fits all" approach may not work. This is especially true for the drinking water program where EPA has delegated primary enforcement authority in forty-nine states. EPA must carefully consider the difficulties that might arise from promulgating one set of regulations with consideration for the differences between system-to-EPA reporting and system-to-state reporting and may need to promulgate similar, but different rules for each program.

EPA also needs to be aware that some states already have laws on electronic reporting and recordkeeping. EPA should ensure that proposed Federal requirements do not conflict with existing state requirements.

Use of Performance Criteria

State drinking water programs support EPA's intention to maintain a technology-neutral rule and instead only provide performance criteria. EPA should ensure that the rule language is completely technology-neutral in order to allow a state drinking water program to use the technology of its choice to meet the underlying performance goals of the rule.

Timing/Approval Process

EPA should not impose a new approval process to allow for electronic reporting and recordkeeping under the drinking water program. State drinking water programs currently assume responsibility for implementing the SDWA via delegation agreements and that mechanism should be used to approve electronic reporting and recordkeeping.

Rather than rely on a prescriptive "review and approval" procedure conducted by EPA before a reporting entity can use its electronic reporting and/or recordkeeping systems, EPA should use the delegation agreement as a vehicle whereby the state agrees to follow the specified performance criteria for electronic reporting and recordkeeping. Using this self-certification process instead of a prescriptive, centralized "review and approval" process conducted by EPA will minimize administrative burdens to states and provides flexibility for varying state approaches. Because the self-certification is tied to other Federally delegated responsibilities, it also provides a robust approach that will meet the demands of a strong enforcement capability. Additionally, using this approach would ensure that approval of a state drinking water program's system would not preclude them from continuing to accept electronic reporting if they are already doing so.

Electronic Record

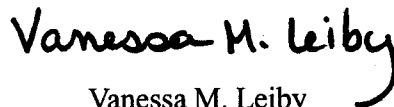
EPA should make sure that this rule does not preclude the use of printed records to satisfy recordkeeping requirements when the records were originally created in digital or electronic form. EPA must also address how data that is collected electronically, but not reported nor printed, such as continuous monitoring devices and data acquisition system, are to be handled.

A broad reading of the proposed definition for electronic record (*any combination of text, graphics, data, audio, pictorial, or other information represented in digital form that is created, modified, maintained, archived, retrieved or distributed by a computer system*) could be interpreted to mean that any data created or maintained on a computer is an electronic record and subject to this rule. Printing out data would not alter its status as an electronic record, as the data would have been previously created or maintained on a computer.

EPA must also address data collected via continuous monitoring devices and data acquisition systems. Data collected this way are typically used for treatment plant operational purposes and not for compliance determinations and printing of these data are not typically a viable option. EPA should ensure that the rule requirements do not make the use of these types of devices prohibitive.

ASDWA and the state drinking water programs look forward to continuing to work with EPA to further develop electronic transfer of data capabilities. Any questions or concerns regarding these comments can be directed to my attention at (202) 293-7655.

Sincerely,



Vanessa M. Leiby
Executive Director

c: David Schwarz, OEI
Evi Huffer, OEI
Chuck Job, OGWDW
Jeff Bryan, OGWDW